

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM OLIVER,)	
)	
Plaintiff,)	
)	
v.)	No. 4:13CV01478 ERW
)	
ZIMMER, INC., <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the Court on Defendants’ Motion for a More Definite Statement [ECF No. 18] and Plaintiff’s Response and Request for an Extension of Time [ECF No. 31].

In July 2013, Plaintiff William Oliver filed suit in this Court against Defendants Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Orthopaedic Surgical Products, Inc., using a “Short Form Complaint” based on the “Master Long Form Complaint” from the “Zimmer NexGen Knee Implant Products Liability Litigation, MDL 2272” [ECF No. 1]. Subsequently, the case was transferred to the Northern District of Illinois for purposes of Multidistrict Litigation (“MDL”) [ECF No. 8]. However, the case was remanded back to this Court in October 2014 [ECF No. 11], because, according to Defendants, “Plaintiff did not have any of the products that were a part of the MDL or listed in the Short Form Complaint implanted in him” [ECF No. 19 at 1].

On February 9, 2015, Defendants filed their Motion for a More Definite Statement [ECF No. 18], because Plaintiff had not amended his Complaint upon remand from the MDL. Specifically, Defendants ask the Court to “order Plaintiff to file a more definite statement

identifying the Zimmer device(s) Plaintiff contends injured him and the nature of his alleged injuries” [ECF No. 19 at 5]. On February 23, the Court ordered Plaintiff to file a response to Defendants’ Motion “no later than March 5, 2015” [ECF No. 20]. Although Plaintiff subsequently filed electronic copies of some medical records [ECF Nos. 21, 22], he failed to truly respond to Defendants’ Motion. On March 10, the Court took note of this failure and ordered Plaintiff to file a response “no later than March 20, 2015” [ECF No. 24]. Again, Plaintiff failed to comply, and on April 8, the Court noted this failure and ordered Plaintiff to “Show Cause, no later than April 17, 2015, why this action should not be dismissed for failure to prosecute” [ECF No. 27]. On April 17, Plaintiff filed a short, handwritten “Motion” [ECF No. 28]. Although the handwriting was partially illegible and difficult to decipher, the Motion appeared to: (1) ask the Court to appoint a lawyer for Plaintiff; and (2) provide various “reasons” for the filing of his lawsuit. The Court denied Plaintiff’s Motion, and ordered Plaintiff to file a Response to Defendants’ Motion for a More Definite Statement, stating, “Any further filings from Plaintiff must be composed in such a form that the Court can better understand Plaintiff’s arguments and requests” [ECF No. 30 at 3]. Prior to the issuance of this particular Order denying Plaintiff’s request for appointed counsel, Plaintiff had also made another filing, on April 24 [ECF No. 29]. That filing contained another short, handwritten note attempting to “show what [Plaintiff is] suing for” [ECF No. 29 at 1], with several more pages of medical records attached [ECF No. 29-1]. Again, Plaintiff’s handwriting was difficult to decipher.

On May 18, Plaintiff filed his Response and Request for an Extension of Time [ECF No. 31], which included a one-page typed note, a one-page handwritten note, and various attached documents. The typed note purports to provide the Court “with a more definite statement as to my best of my ability,” and provides a confusing, unorganized, and incomplete description of

Plaintiff's claim and his attempts to obtain various documents [ECF No. 31 at 1]. The note requests the Court grant Plaintiff "more sufficient time to obtain more in paper work" [ECF No. 31 at 1]. The handwritten note states, "I hope [t]his is what you are asking for[;] as you can see[,] I'm [t]rying to get you [what] you need. You can see I'm waiting for more paper [t]o be sen[t] from V.A." [ECF No. 31 at 2]. Attached are: (1) a letter addressed to Plaintiff from a "Patient Advocate," presumably an employee of Plaintiff's healthcare provider, regarding Plaintiff's "request for knee replacement information"; (2) a letter addressed to Plaintiff from a law firm, which declined to represent him in this case; and (3) information from a website regarding the "Zimmer Knee Recall" [ECF No. 31 at 3-8].

This case's current stagnation is rooted in the claimed insufficiencies of the "Short Form Complaint" [ECF No. 1] upon remand from the MDL. Specifically, the "Short Form Complaint" is based on a "Master Long Form Complaint" from litigation in which Plaintiff is no longer taking part (i.e., the MDL). For purposes of refocusing the litigation and issues now before this Court, it would benefit all parties if Plaintiff filed an Amended Complaint. Therefore, the Court will grant Plaintiff leave to file an Amended Complaint no later than June 30, 2015. Thus, the Court will grant Plaintiff's request for additional time, but only for the purpose of preparing the Amended Complaint. The Court orders Plaintiff to draft and file his Amended Complaint using the Court-provided form for civil complaints. Accordingly, the Clerk of the Court is ordered to send Plaintiff a copy of the form entitled "MOED-0032 Civil Complaint," with further instructions regarding how Plaintiff can access the form online. As with any other future filing, the Amended Complaint must be composed in such a form that the Court can better understand Plaintiff's arguments and requests. An Amended Complaint containing illegible, indecipherable, or inarticulate writing or language will be dismissed.

Accordingly,


IT IS HEREBY ORDERED that Plaintiff's Request for an Extension of Time [ECF No. 31] is **GRANTED**, for the purpose of preparing an Amended Complaint.

IT IS FURTHER ORDERED that Plaintiff shall file, no later than June 30, 2015, an Amended Complaint, using the Court-provided form.

IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff a copy of the form entitled "MOED-0032 Civil Complaint," with further instructions regarding how to access the form online.

IT IS FURTHER ORDERED that Defendants' Motion for a More Definite Statement [ECF No. 18] is **DENIED**, as moot.

Dated this 20th Day of May, 2015.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE